

### EXAMINER'S COMMENT

The declaration of Robert Frederick, Ashish Agrawal and Jeffrey Barr filed on May 31, 2007, and the declaration of James A. White filed on May 6, 2008, both under 37 CFR 1.131 are sufficient to overcome the Hazzard reference.

Generic claim 16 is allowable. The election of species requirement between the 36 species, as set forth in the Office action mailed on September 13, 2006, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The election of species requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Therefore, claims 17-20, 22, 23, 25-27, and 29-84, directed to different species of generic claim 16 are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim.

In view of the above noted withdrawal of the election of species requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once an election of species requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Therefore, claims 16-93 are allowed.

Art Unit: 3600

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is (571)272-8116. The examiner can normally be reached on Flex-time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Jeffrey A. Smith/  
Supervisory Patent Examiner, Art Unit  
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AAS

May 8, 2008